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PATENT  
718452.9

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Larry Baker

Serial No.: 10/526,942

Filed: March 8, 2005

For: URINARY TRANSFER SYSTEM  
AND ASSOCIATED METHOD OF USE

Examiner: Not yet assigned

Group Art Unit: Unknown

Attorney Docket No.: 718452.9

Customer No.: 027128

Confirmation No.: 7563

RECEIVED

SEP 22 2005

OFFICE OF PETITIONS

**PETITION UNDER 37 C.F.R. SECTION 1.47 (b) BY ENTITY  
HAVING PROPRIETARY INTEREST TO FILE APPLICATION  
ON BEHALF OF INVENTOR WHO REFUSES TO SIGN DECLARATION**

**INTRODUCTION**

Urinary Transfer Systems, LLC ("UTS") having a proprietary interest in the above-identified application hereby petitions to make this application on behalf of the non-signing inventor, Warren L. Spielman, who is not willing to sign the Declaration associated with U.S. Patent Application No. 10/526,942.

This Petition is accompanied by a showing of sufficient proprietary interest, proof of the pertinent facts, and the last known address of the non-signing inventor as set forth below and as set forth in the Statement of Facts which accompanies this Petition as Exhibit G.

The fee set forth in Section 1.17(g) required by 37 C.F.R. Section 1.47(a) is paid as

follows:

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Application of: Larry Baker  
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The Patent office is authorized to charge the amount of \$200.00 to  
Deposit Account No. 11-0160.

Proprietary interest is established on behalf of Urinary Transfer Systems, LLC on the  
basis of the Agreements attached hereto as Exhibits A and B.

**EFFORTS AND FACTS ASSOCIATED WITH TRYING TO  
OBTAIN INVENTOR'S SIGNATURE**

There were several attempts to get Warren L. Spielman to execute the formal documents  
associated with this application. The enclosed letters and agreements with Mr. Spielman as well  
as the explanation of facts surrounding this refusal to execute the formal documents associated  
with this application are set forth below.

Warren L. Spielman is the Chairman and CEO of Universal Marine Corporation.  
Universal Marine Corporation contracted with Urinary Transfer Systems ("UTS") to assist in the  
area of designing and pre-production of prototypes arising from an invention under an  
Intellectual Property/Consulting and Development Agreement which was executed by Mr.  
Spielman on March 6, 2004, a copy of which is hereby attached hereto as Exhibit A. A Contract  
Extension between the same parties was likewise executed on September 27, 2004, a copy of  
which is hereby attached as Exhibit B.

The Intellectual Property/Consulting and Development Agreement (Exhibit A) dated  
March 6, 2004 specifically recites at Page 2, Section 11 that: "Any and all inventions and ideas  
relating to Consultant /General Contractor's activities for the Company pursuant to this  
Agreement, whether patentable or not, conceived or reduced to practice by Consultant/General  
Contractor during the performance of this Agreement will be immediately reported to UTS and

shall be the exclusive property of UTS and that the Consultant/General Contractor "agrees to assign the same to UTS. Consultant/General Contractor will perform at UTS' request any expense and act which he/she can reasonably perform which is necessary to vest title to such inventions and ideas in UTS and to execute unable or unwilling to execute such documents," and the Consultant/General Contractor, pursuant to Section II of the Agreement, further appointed any officer of UTS as Consultant/General Contractor's irrevocable attorney-in-fact, coupled with an interest, for the purpose of executing such documents."

The Contract Extension (Exhibit B) signed on September 27, 2004 does not abridge or negate any of these rights but states on Page 2, Paragraph 2, that: "WHERE AS CONTRACTOR ALSO AGREES TO EXTEND HIS CONTRACT, WITH ALL INTELLECTUAL PROPERTY AND BUSINESS NON-COMPETE AGREEMENTS STILL IN PLACE, ...".

The country of citizenship for Warren L. Spielman is the United States of America. His last known address is **7301 Overbrook Drive, St. Louis, Missouri 63121.**

A complete patent application, with formal documents, was sent to Warren L. Spielman at his last known address by letter dated May 16, 2005, via Federal Express, in accordance with the Manual of Patent Examining Procedure Section 409.03(d). The letter is attached hereto as Exhibit C. This letter was delivered to an individual responding at Warren L. Spielman's last known home address as evidenced by Mr. Spielman's response letters attached hereto as Exhibits D and E. This was a bona fide attempt to present Mr. Spielman with application papers. A request to indicate refusal was incorporated in the letter to Mr. Spielman dated May 16, 2005 and the May 16, 2005 letter made it clear that if the formal documents were not received in one

week, that there would be an assumption that Mr. Spielman had refused to sign, in accordance with Mr. Spielman's previous rejections.

Mr. Spielman responded to the May 16, 2005 letter on May 19, 2005 and again on June 3, 2005, copies of which are enclosed as Exhibits D and E. Although Mr. Spielman indicated in his June 3, 2005 response that he is not refusing to sign the formal documents, he is in fact refusing to sign based upon his contractual obligations set forth in Exhibits A and B and Mr. Spielman is now requesting additional compensation of \$8,000.00, which disputed amount was abated by the September, 2004 Contract Extension (Exhibit B), which Mr. Spielman acknowledges. Mr. Spielman has been paid for his services rendered under his agreements (Exhibits A and B) with Urinary Transfer Systems, LLC as evidenced by the Statement of Facts attached hereto as Exhibit F and attested to by Mr. Donald Crank, General Counsel and Corporate Secretary of UTS. Mr. Spielman's actions constitute a refusal to sign.

#### **SHOWING OF PROPRIETARY INTEREST BY UTS**

The Agreements attached hereto as Exhibits A and B establish UTS' proprietary interest in this application. Therefore, it is respectfully believed that Urinary Transfer Systems, LLC owns any and all patent rights that arose from Mr. Spielman's work associated with the above-identified patent application entitled "URINARY TRANSFER SYSTEM AND ASSOCIATED METHOD OF USE," and that Urinary Transfer Systems, LLC has a clear and unequivocal proprietary interest in this patent application, i.e., U.S. Patent Application No. 10/526,942.

There will be irreparable damage and the rights of the parties will not be preserved if this Petition is denied. This patent application claims priority of International Application PCT/US04/040409, which was filed on December 2, 2004, and the International Application

claims priority to U.S. Provisional Patent Application No. 60/481,785, which was filed on December 12, 2003, long before any agreements were entered into with Mr. Spielman. Urinary Transfer Systems, LLC will lose this claim to priority if it cannot proceed with this application.

## **DISCUSSION**

### **LAW SUPPORTING PROPRIETARY INTEREST BY UTS**

Although the default rule is that the inventor owns the invention, even if he/she conceived it or reduced it to practice in the course of his employment, see, *Teets v. Chromalloy Gas Turbine Corp.*, 83 F.3d 403 (Fed. Cir. 1996) *cert. den.*, 117 S.Ct. 513 (1996); *Banks v. Unisys Corp.*, 228 F.3d 1357, 1359 (Fed. Cir. 2000), "there are two exceptions to this rule.

**First, an employer owns an employee's invention if the employee is a party to an express contract to that effect and second, where an employee is hired to invent something or solve a particular problem, the property of the invention related to this effort may belong to the employer."** *Banks*, 228 F.3d at 1359. An employee may freely consent by contract to assign all rights in inventive ideas to the employer. Without such an express assignment, if the employee was hired to invent, **then the employer owns the invention.** *United States v. Dubilier Condenser Corp.*, 289 U.S. 178, 187 (1933); *Standard Parts Co. v. Peck*, 264 U.S. 52 (1924).

The Federal Circuit found an implied contract to assign a patent "where the employer specifically hires or directs the employee to exercise inventive faculties." *Teets*, 83 F.3d at 407. This may result from an employment contract, or from an implied obligation arising from the nature of the employment. When applying the "hired to invent" exception, a court must examine the employment relationship at the time of the inventive work to determine if the parties entered into an implied-in-fact contract to assign patent rights. *Teets*, 83 F.3d at 407. "An implied-in-

fact contract is an agreement founded upon a meeting of the minds, which, although not embodied in an express contract, is inferred, as a fact from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding." *Id.* In *Teets*, an employee sued an employer, seeking declaration of ownership of the invention. *Teets*, 83 F.3d at 405. The Federal Circuit held that an implied-in-fact contract existed to assign patent rights to the employer where the employer assigned the employee to develop the invention. *Id.* at 408.

In *Standard Parts*, the employee was contracted, like Warren L. Spielman in this situation, to solve a problem for the company that hired the individual. *Standard Parts*, 264 U.S. at 53-54. The contract in *Standard Parts*, like the Agreement between Urinary Transfer Systems and Universal Marine Corporation, called for the independent contractor/employee to "devote his time to the development of a process of machinery" for a stated compensation. The United States Supreme Court held that the one who engaged the contracted employee for his services, and paid for them, owned the invention resulting from such an engagement. *Id.* at 59.

Considering the contractual relationship, Universal Marine Corporation was hired to invent by Urinary Transfer Systems. Like the relationships between the employer and the employee in *Teets* and *Standard Parts*, Urinary Transfer Systems hired Universal Marine Corporation, and specifically Warren L. Spielman as a contract employee, to develop the Urinary Transfer System (Non-Intrusive Catheter) and Warren L. Spielman of Universal Marine Corporation devoted his time to the development of the System. Accordingly, Urinary Transfer Systems owns all of the patent rights in the Urinary Transfer System (Non-Intrusive Catheter).

A court of competent jurisdiction (federal, state, or foreign) would, by the weight of authority in the jurisdiction involved and as set forth above, award title of the Invention to the

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Applicant, i.e., Urinary Transfer Systems, under 37 C.F.R. Section 1.47(b) . All legal decisions cited above are reported in the United States Patents Quarterly so that enclosure is not required.

Therefore, Urinary Transfer Systems, LLC has sufficient proprietary interest in the subject matter to justify the filing of the application and to claim ownership thereto. Moreover, there would be irreparable harm to Urinary Transfer Systems, LLC if this Petition is not granted as there is a priority claim to International Application PCT/US04/040409, filed on December 2, 2004, and the International Application claims priority to U.S. Provisional Patent Application No. 60/481,785, filed on December 12, 2003.

#### **CONCLUSION**

It is respectfully believed that there is full compliance with 37 C.F.R. Section 1.47(b) in its entirety. Warren L. Spielman, as evidenced by the Intellectual Property/Consulting and Development Agreement (Exhibit A), as well as a Contract Extension (Exhibit B) was specifically hired to reduce to practice the subject matter of the present Invention described in the earlier filed U.S. Provisional Patent Application No. 60/481,785 filed December 12, 2003, the International Application PCT/US04/040409, filed on December 2, 2004 and U. S. Patent Application Serial Number 10/526,942, filed March 8, 2005 and Urinary Transfer Systems, LLC would be irreparably harmed if this Petition is not granted as the priority claims would be irrevocably lost.

Statement of Facts in Support of this Petition signed by Mr. Donald W. Crank, General Counsel and Corporate Secretary of Urinary Transfer Systems, LLC is attached hereto as Exhibit F.

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Therefore, it is respectfully requested that this Petition be granted. If a telephone conference would facilitate resolving any issue related to this Petition, the undersigned attorney would appreciate and welcome such telephone conference. Contact information is provided below.

Respectfully submitted,

Date: \_\_\_\_\_

16 SEPT 05



Samuel Digirolamo  
Reg. No. 29,915  
Blackwell Sanders Peper Martin LLP  
720 Olive Street, Suite 2400  
St. Louis, MO 63101  
314-345-6225  
314-345-6325 (facsimile)  
sdigirolamo@blackwellsanders.com  
ATTORNEYS FOR APPLICANT





February 27, 2004

# Intellectual Property/Consulting and Development Agreement

RECEIVED

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OFFICE OF PETITIONS

This agreement is made and entered into by the undersigned authorized individuals and corporate officers between "Urinary Transfer Systems, a Limited Liability Company", registered in the State of Missouri and domiciled at 2865 Neuhoff Road, St. Louis, Missouri 63136 (herein after "UTS" or "the Company") and "Universal Marine Corporation, a Missouri Corporation", in good standing and domiciled at 7301 Overbrook, St. Louis, Missouri 63121 (herein after Consultant/General Contractor), and shall govern the terms and conditions under which Consultant/General Contractor will provide services to the Company in the area of designing and pre-production of the prototypes arising from the UTS invention (known as the Non-Intrusive Catheter) as referenced as "Patent Pending" under the Provisional Patent #60/481,785 filed on

12/12/03

URINARY TRANSFER SYSTEM & ASSOCIATED METHODS  
OF USE

1. Consultant/General Contractor will provide these services during a discrete project phase known as "Product Development", whereby the original inventor's drawings, illustrations, and prototype product descriptions will be reviewed, analyzed, and illustrated so that both display and functional working models can be developed and demonstrated to prospective purchasers, investors, hospitals administrators, and merchandisers in order to support both the business models and production models illustrated within the business plan summary.
2. Consultant/General Contractor will develop "Camera Ready" sketches, illustrations, and mechanical drawings and blueprints necessary for manufacturing and pre-manufacturing tool and die casting.
3. Consultant/General Contractor will review tool and die casting proposal by manufacturer, Gus Jokkers, and review fabrication assembly procedures and line quality control requirements.
4. Consultant/General Contractor will test and sample 200 prototype models prior to delivery receipt and final payment to manufacturer.
5. Consultant/General Contractor will outline the requirements necessary for UL Underwriting requirements and work in conjunction with manufacturer in mainland China in order to proceed with clinical trials sponsored by a major Midwestern teaching/research hospitals.
6. UTS agrees to pay Consultant/General Contractor for such services a fee of \_\_\_\_\_ Dollars per \_\_\_\_\_ (exclusive of travel time) upon invoice by Consultant/General Contractor. In addition, UTS agrees to reimburse Consultant/General Contractor for whatever expenses for travel, food, and lodging are incurred with UTS's approval during the performance of these

EXHIBIT

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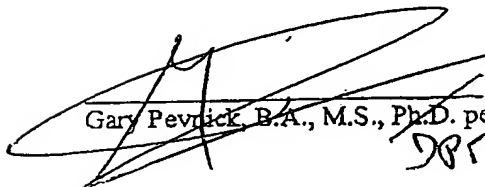
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services. General Contractor/Consultant will be responsible for payment to development subcontractors from general payment account and keep accurate records of payroll and expenses associated with authorized Estimated Project Fees.

7. The term of this Agreement shall be for the period beginning the day the last party signs herein below and ending December 1, 2004. However, either party may cancel this Agreement on thirty (30) days written notice to the other party. If canceled by UTS, Consultant/General Contractor will be reimbursed within 10 days for all services rendered from that date of notification, in exchange, UTS will receive all files, property, or work productions within 10 days from that date of termination.
8. If it appears to Consultant/General Contractor that there may be a conflict of interest between something which UTS requests of the Consultant/General Contractor and some of Consultant/General Contractor's outside responsibilities, Consultant/General Contractor shall immediately bring this matter to the Company's attention and such issues will be resolved at that time.
9. Consultant/General Contractor agrees to maintain in confidence and not use for his/her own purpose or those of others any information which has been or is disclosed to or generated by Consultant/General Contractor during the performance of this Agreement if such information concerns UTS's research and development plans and/or is not generally known to the public. This obligation of confidentiality and non-use shall remain in effect for such time as said information remains unknown to the public and shall survive the termination of this Agreement. If assistants are used by Consultant/General Contractor in the performance of services hereunder, Consultant/General Contractor shall limit the use of such assistants to only those who are absolutely necessary in order for Consultant/General Contractor to provide the services requested by UTS, and shall inform such assistants of the confidential nature of UTS's information and their obligation with respect thereto.
10. Consultant/General Contractor confirms that he/she is free to enter this Agreement with UTS and to advise and consult with UTS as provided in this Agreement. Unless otherwise agreed in writing between the parties and signed by an officer of UTS prior to disclosure, all information given by Consultant/General Contractor to UTS is given on a strictly non-confidential basis with no obligation of any kind imposed on Company with respect to its disclosure or use. Consultant/General Contractor agrees to refrain from disclosing any information to UTS which Consultant/General Contractor knows, or has reason to know, infringes any trade secret or other property right or any third party.
11. Any and all inventions and ideas relating to Consultant/General Contractor's activities for the Company pursuant to this Agreement, whether patentable or not, conceived or reduced to practice by Consultant/General Contractor during the performance of this Agreement will be immediately

reported to UTS and shall be the exclusive property of UTS and agrees to assign the same to UTS. Consultant/General Contractor will perform at UTS's request any expense and act which he/she can reasonably perform which is necessary to vest title to such inventions and ideas in UTS and to execute unable or unwilling to execute such documents, Consultant/General Contractor hereby appoints any officer of UTS as Consultant/General Contractor's irrevocable attorney-in-fact, coupled with an interest, for the purpose of executing such documents. Works provided by Consultant/General Contractor hereunder shall be considered "works for hire" under the Copyright law to the extent permitted by the Copyright laws.

12. It is understood and agreed that Consultant/General Contractor is not an agent or employee of Consultant/General Contractor for any purpose whatsoever but is an independent contractor.
13. The foregoing may not be changed or waived except in writing signed by an officer of UTS and the Consultant/General Contractor.

  
Gary Pevnick, B.A., M.S., Ph.D. pending  
DB

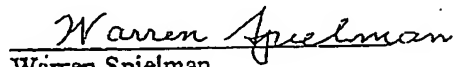
Title: Chief Executive Officer

Date: 9/29/04

  
Donald W. Crank, Esq.

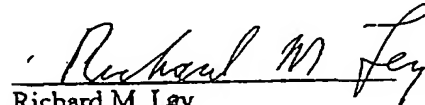
Title: General Counsel & Corporate Secretary

Date: 2/27/04

  
Warren Spielman

Title: General Contractor  
Chairman, Universal Marine Corp.

Date: 3-6-04

  
Richard M. Lay

Title: Sub-Contractor

Date: 3-6-04

## Addendum

### PROJECT STAGES AND ESTIMATED TIME TABLE

#### Stage I Product Development

Estimated Project Fees: \$4000-5500 (March 31-April 10, 2004)

Initial Retainer Deposit - \$1500

Progress Payment: Due on the 10<sup>th</sup> and 25<sup>th</sup> of each month.

- ☐ Review Patent Applications, drawings, descriptions and notes of inventor
- ☐ Review related inventions, products, merchandise if any (work with Patent Attorney)
- ☐ Identify, Catalogue, Purchase components display
- ☐ Assemble, Configure power sources and hand manufacture visual display model and functional model for testing and demonstration

#### Stage II Engineering and Pre-Fabrication

Estimated Project Fees: \$2500-3500 (March 31-April 15, 2004)

- ☐ Camera-ready, Mechanical drawings of Components
- ☐ Precision blueprints for components
- ☐ Assembly suggestions and pre-fabrication fittings

#### Stage III Manufacturing and Testing

Estimated Project Fees: \$5000 (April 30-May 25, 2004)

- ☐ Review and Sign-off on tolerances acceptable for tool and die process
- ☐ Establish quality control line production guidelines
- ☐ Establish testing criteria
- ☐ Test all 200 prototypes
- ☐ Delivery and Acceptance to matching prototype to production-ready model

#### Stage IV Permanent Patent Applications Filing and Product Enhancement

Estimated Project Fees: \$6000 (September 1-September 30, 2004)

- ☐ Identify enhancements
  1. Clinical Trials
  2. Consumer marketing
  3. Drawing and Illustrations for focus groups
- ☐ Document and Describe Product within patent application guidelines in conjunction with K. Kercher (Patent Counsel) of Blackwell Sanders Peper Martin

The Law Firm of  
DONALD WILLIAM CRANK, LLC

Stage V Quality Control/Production Runs

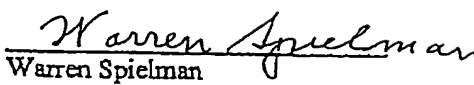
Estimated Project Fees: \$7000 (September 30-December 1, 2004)

- ☐ Establish quality/production criteria
- ☐ Establish fault tolerances
- ☐ Statistical quality sampling procedure
- ☐ Production Reporting

  
Gary Pevnick, B.A., M.S., Ph.D. pending

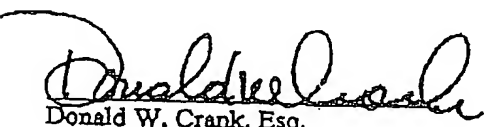
Title: Chief Executive Officer

Date: \_\_\_\_\_

  
Warren Spielman

Title: General Contractor  
Chairman, Universal Marine Corp.

Date: 3-12-04

  
Donald W. Crank, Esq.

Title: General Counsel & Corporate Secretary

Date: 3/05/04

\_\_\_\_\_  
Richard M. Lay

Title: Sub-Contractor

Date: \_\_\_\_\_



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Urinary Transfer System, LLC  
2865 Netherton  
Florissant, MO 63136

Gary F. Pevnick, PT, CEO  
Donald William Crank, Esq., COO

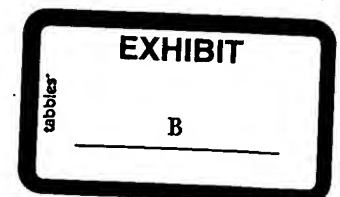
Telephone: 314-653-0918  
Fax: 314-653-0598  
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[donald1298@sbcglobal.net](mailto:donald1298@sbcglobal.net)

SEPTEMBER 8, 2004

**RE: GENERAL CONTRACTOR'S CONTRACT EXTENSION FOR A  
SPECIFIC AGENCY AGREEMENT TO INCLUDE FABRICATION AND QUALITY  
ASSURANCE OF 'STAGE 4', 'UROVACS' PRODUCED DURING THE PERIOD  
AUGUST 2004-JANUARY 2006 BY THE SPECIFIC DESIGNATED FABRICATORS  
RECRUITED AND VETTED BY GENERAL CONTRACTOR AND APPROVED AND  
CONTRACTED BY URINARY TRANSFER SYSTEMS,LLC.**

WHERE AS THE UNDERSIGNED PARTIES KNOWN AS URINARY TRANSFER SYSTEMS,LLC, (UTS ) AND UNIVERSAL MARINE CORPORATION, (UNIVERSAL ), AND THEIR AUHTORIZED SIGNATORIES WISH TO EXTEND THE BUSINESS RELATIONSHIP OF TECHNOLOGY PRODUCER-(UTS) AND GENERAL CONTRACTOR (UNIVERSAL ) AND ALL OF THE GENERAL COVENANTS OF THE PRIOR NON-DISCLOSURE, (N.D.A.), AGREEMENTS AND NON-COMPETE AGREEMENTS, INCLUDING 'NO-SHOP RIGHTS' THEY HAVE PROPOSED AND AGREE TO ALL OF THE FOLLOWING POINTS OF THIS SPECIFIC AGENCY FABRICATION AGREEMENT;

- 1) WHERE AS GENERAL CONTRACTOR HAS BEEN PAID IN FULL FOR ALL CONTRACTUAL OBLIGATIONS DURING THE GENERAL CONTRACTOR AND CONSULTANCY AGREEMENT BETWEEN THESE SAME PARTIES TO DATE 'EXCEPT THE INVOICE DATED AUGUST 18,2004 WITH A NET AMOUNT OF \$8,000 FOR THREE MAJOR ENHANCEMENTS WHICH WILL BE FULLY ABATED BY THIS AGREEMENT WHEN ACCEPTED AND SIGNED'..... AND WHERE AS GENERAL CONTRACTOR HAS NO OUTSTANDING CLAIMS PENDING AGAINST HIM BY HIS SUBCONTRACTOR'S AND HAS FULFILLED ALL THE LISTED OBLIGATIONS REFERENCED IN THE CONSULTANCY AGREEMENT AND



NON-DISCLOSURE DOCUMENTS, THE GENERAL CONTRACTOR, (UNIVERSAL MARINE CORPORATION) AGREES TO PERFORM ALL THOSE DUTIES LISTED IN STAGE FOUR AND <sup>FIVE</sup> ~~SIX~~ OF THE INITIAL AGREEMENT INCLUDING, BUT NOT LIMITED TO DEVELOPING FAULT TOLERANCE CRITERIA, ACCEPTABLE STATISTICAL CONTROLS, MECHANICAL TESTING PROCEDURES AND MANUFACTURING SAMPLING TECHNIQUES NECESSARY TO DELIVER THE HIGHEST QUALITY AND SAFETY RATED ELECTRO-MECHANICAL 'URINARY EVACUATION AND TRANSFER MACHINES' TO MEDICAL SUPPLY CHAINS, PATIENTS, NURSING HOMES, AND HOME HEALTH CARE AGENCIES, WHEREAS IF POSSIBLE 'FAULT TOLERANT' BUT AT THE VERY LEAST WITH A LIMITED WARRANTY FOR MOVING PARTS AND RATED FOR TOP SAFETY RATINGS. CONTRACTOR, UNIVERSAL AGREES TO PERFORM THESE ACTIVITIES WITHOUT THE FIXED COMPENSATION LEVELS DESCRIBED IN THE INITIAL AND PRIOR COMPENSATION AGREEMENT ( \$13,000 ) IN RETURN FOR A VARIABLE COMPENSATION REGRESSIVE SCHEDULE INCLUDED HEREIN

UNIVERSAL MARINE CORP. WILL NOT BE DIRECTLY INVOLVED WITH ABOVE PROSPECTIVE CUSTOMERS, NOR MARKETING, FOCUS GROUPS, CLINICAL TRIALS OR SIMILAR ACTIVITIES.

- 2) WHERE AS CONTRACTOR ALSO AGREES TO EXTEND HIS CONTRACT, WITH ALL INTELLECTUAL PROPERTY AND BUSINESS NON-COMPETE AGREEMENTS STILL IN PLACE, TO INCLUDE; IDENTIFICATION OF SUITABLE FABRICATOR TO PRODUCE AT LEAST TWENTY-FIVE AND AS MANY AS TWO HUNDRED MINIMUM DEFECT 'FAULT TOLERANT' PROTOTYPE 4 'UROVACS' BETWEEN AUGUST 1, 2004 AND JAN. 2006, VETTING OR DUE DILIGENCE OF BUSINESS SOLVENCY AND ENGINEERING REPUTATION OF DESIGNATED MANUFACTURER, NEGOTIATIONS FOR REGRESSIVE PRICING ANALYSIS NECESSARY TO MAXIMIZE BUSINESS PROFITABILITY, WEEKLY SUPERVISION OF ASSEMBLY METHODS AND PRODUCT TESTING FOR FAULT TOLERANCES NECESSARY FOR 'DEFAULT' STANDARDS SUITABLE FOR MARKET POSITIONING AGAINST EXISTING COMPETITION AND PRODUCT SUBSTITUTES LIKE EXTERNAL CATHETERS.
- 3) STATISTICAL SAMPLING DIRECTED TO SERVE NECESSARY QUALITY ASSURANCE MODELS DEVELOPED IN CONCERT BY CONSULTANCY AND C.O.O./GENERAL COUNSEL, DONALD WILLIAM CRANK, ESQ.
- 4) DIRECT TESTING OF PRODUCTS IN FACTORY AND 'IN SITU' DURING FIRST THREE MONTHS OF OPERATIONS AND TRIALS TO DETERMINE VIABILITY AND DURABILITY OF ELECTRICAL AND

MOVING MECHANICAL PARTS AND FEASIBILITY OF "LIMITED PRODUCT WARRANTY". TESTING LOCATION ACCEPTABLE TO UNIVERSAL..

- 5) WEEKLY PROJECT MANAGEMENT PRODUCTION AND STATISTICAL REPORTS TO UTS, CHIEF OPERATIONS OFFICER AND GENERAL COUNSEL, DONALD CRANK.
- 6) PRODUCTION OPERATIONS CONSONANT WITH PATENT AND TRADEMARK REQUIREMENTS AS PROVIDED BY GENERAL COUNSEL, DONALD CRANK OR OUTSIDE PATENT COUNSELS OF BLACKWELL SANDERS, PEPPER, MARTIN TO ASSURE PROTECTION OF 'TRADE SECRETS' AND NON-COMPETE AGREEMENTS IN PLACE WITH MANUFACTURER.
- 7) UNIVERSAL MARINE CORPORATION WILL COORDINATE EFFORTS WITH MANUFACTURER TO ACHIEVE MAXIMUM ECONOMIES IN PRODUCTION OF HIGHEST PRODUCT QUALITY FOR LOWEST COSTS AVAILABLE.

THE REMUNERATION FOR THE ABOVE PROJECT IS BASED UPON THE ACTIVITIES LISTED ABOVE AND ALSO REQUIRES STRICT ADHERENCE TO THE ETHICAL STANDARDS AND LEGAL TERMS INHERENT IN AN AGENCY RELATIONSHIP WITH UNIVERSAL MARINE CORPORATION BEING THE FABRICATOR AGENT FOR UTS, WITH A LIMITED AND SPECIFIC POWER OF ATTORNEY RELEVANT TO THE REMUNERATED RESPONSIBILITIES LISTED ABOVE. ALL FINAL DECISIONS, HOWEVER, INVOLVING ANY MONEY OVER FIVE HUNDRED DOLLARS FOR AND DURING THE LIFE OF THE PROJECT REQUIRES THE SIGNATURE OF EITHER ONE OR BOTH OFFICERS OF UTS, SIGNED IN CONCERT WITH THE OPERATING AGREEMENT.

THIS AGREEMENT AS REVISED REPLACES AND CANCELS THE INVOICE OF AUGUST 18, 2004 FOR THE THREE MAJOR ENHANCEMENTS AND PERMITS THE USE OF SAME IN THE PATENT APPLICATION FOR THIS PRODUCT. IF THIS AGREEMENT WERE NOT ACCEPTED, THE INVOICE FOR SAID ENHANCEMENTS AGAIN BECOMES EFFECTIVE AND IF NOT COMPENSATED THE USE OF THE ENHANCEMENTS SHALL BE WITHDRAWN.

IN CONSIDERATION FOR THE ABOVE COMMITMENTS WHEN SUCCESSFULLY PERFORMED BY UNIVERSAL, THE UTS, LLC AGREES TO THE FOLLOWING REGRESSIVE MODEL OF VARIABLE COMPENSATION BASED ON THE PRODUCTION OF PROTOTYPE 4 'UROVACS'



WITH ALL LISTED COMPONENTS IN PLACE FOR A TERM OF NO LESS THAN THREE MONTHS FROM TODAY'S DATE, FOR A QUANTITY OF NO LESS THAN TWENTY FIVE PROTOTYPE 4 UROVAC UNITS,

THE REGRESSIVE RATE/PROGRESSIVE QUANTITY MODEL;  
UTS, LLC AGREES TO COMPENSATE UNIVERSAL MARINE CORPORATION THROUGH IT'S CHIEF EXECUTIVE, MR. WARREN L. SPIELMAN ACCORDING TO THE FOLLOWING TERMS HEREIN, PERCENTAGES AND PAYMENTS ARE EFFECTIVE REGARDLESS OF MANUFACTURER

- 1) 20% OF THE GROSS DOLLARS BILLED BY MANUFACTURER FOR THE FIRST 100 UROVAC UNITS PRODUCED, TESTED AND UL STAMPED UNDER THE DIRECTION OF SAID AGENT, SPIELMAN.
- 2) 12% OF THE GROSS DOLLARS BILLED BY MANUFACTURER FOR THE SECOND 100 OR 101-200 UROVACS PRODUCED AND 'DELIVERED' TO UTS, LLC FOR SALE AND TRANSFER.
- 3) 2.5% OF THE GROSS DOLLARS BILLED BY MANUFACTURER FOR PRODUCTION LEVELS BEYOND THE FIRST 200 PROTOTYPES UP TO 5,000 PRODUCED
- 4) 1.5% OF THE GROSS DOLLARS BILLED BY THE SPECIFIC MANUFACTURER FROM 5,000 TO 10,000 UNITS PRODUCED AND AFTER THAT 1% THEREAFTER.
- 5) PAYMENTS WILL COMMENCE WITH AN INITIAL RETAINER OF \$1,500 NOT TO BE CREDITED BY UTS, LLC AGAINST LATER SERVICES BILLED BY AGENT FOR SERVICES DESCRIBED. IF NO SERVICES ARE COMMENCED INITIAL RETAINER IS THE PROPERTY OF SPIELMAN/UNIVERSAL MARINE IN EXCHANGE FOR ALL RECORDS, AND AS RECOMPENSE FOR ALL DE MINIMUS EXPENSE REIMBURSEMENT CLAIMS.
- 6) UPON COMMENCEMENT OF PRODUCTION VARIABLE PAYMENTS WILL BE REVIEWED BY BOTH C.E.O. AND C.O.O. BASED UPON WEEKLY PRODUCTION AND QUALITY TESTING REPORTS BY THE MANUFACTURER AND UNIVERSAL MARINE AND SPIELMAN AS THE UTS, LLC FABRICATOR AGENT.

7) PAYMENTS WILL BE MADE BI-WEEKLY AND SENT THROUGH THE U.S. CERTIFIED MAILS AND THE EXPENSE WILL BE CLASSIFIED AS A PAYMENT TO AN INDEPENDENT CONTRACTOR WITH NO EMPLOYMENT STATUS OR BENEFITS ACCORDED TO THE SAME.

8) UNIVERSAL MARINE ENSURES UTS, LLC THAT THE COMPANY AND OR AGENT HAS NECESSARY INSURANCE CERTIFICATES RELEVANT FOR INSURANCE BONDING, LIABILITY COVERAGES AND GENERAL LIABILITY AND WILL PROVIDE COPIES OF THOSE COVERAGES UPON REQUEST TO UTS, LLC OFFICIALS. HOWEVER, IF INSURANCE COVERAGE IS DESIRED BEYOND THAT IN FORCE, THE ADDITIONAL COVERAGE MUST BE NEGOTIATED BY UTS, LLC WITH THE FABRICATOR AND NOT THE RESPONSIBILITY OF THE FABRICATOR AGENT, UNIVERSAL MARINE CORPORATION.

IF FOR ANY REASON A TOTAL OF \$8,000.00 IS NOT PAID BY ABOVE, THE BALANCE WILL BE DUE AND PAYABLE. UNIVERSAL MARINE WILL BE REIMBURSED \$85.00 PER HOUR PLUS TRAVEL EXPENSES FOR ANY ACTIVITY BEYOND THAT IN CONNECTION WITH PRODUCTION MONITORING.

ALL OF THE UNDERSIGNED CONSENT TO THIS AGREEMENT AFTER FULL AND DUE CONSIDERATION TO THE TERMS AND AGREEMENTS HEREIN. ALL PARTIES ARE OF SOUND MIND AND GOOD BUSINESS JUDGMENT AND HAVE HAD THE OPPORTUNITY FOR REVIEW BY INDEPENDENT COUNSEL.

ALL PARTIES AGREE TO ABIDE BY THESE TERMS AND SHOULD ANY ONE TERM OR AGREEMENT BE OBJECTIONABLE IN A CURRENT OR FUTURE LEGAL SYSTEM THEN ALL OTHER TERMS AND AGREEMENTS ARE OPERATIVE AND EXTANT.

ALL PARTIES AGREE THAT THE INITIAL GENERAL CONTRACTOR AGREEMENT AND INHERENT STAGES 1-~~8~~ HAVE EITHER BEEN PERFORMED SATISFACTORILY AND DULY COMPENSATED OR INCORPORATED BY REFERENCE INTO THE AGREEMENT.

ALL PARTIES AGREE TO BE GOVERNED BY THE LAWS OF THE STATE OF MISSOURI RELEVANT TO GENERAL CONTRACT AND THE UNIFORM COMMERCIAL CODE AS ADAPTED BY THE MISSOURI STATE LEGISLATORS.

THIS AGREEMENT IS SEVERABLE BY ALL PARTIES WITH FORTY-FIVE DAY NOTICE WITH NO DAMAGES UNLESS SEVERANCE IS DUE TO FRAUD, MALFEASANCE, THEFT OF INTELLECTUAL PROPERTY OR VIOLATION OF RESTRICTIVE COVENANTS IN THESE AGREEMENTS.

UNIVERSAL MARINE CORP

SIGNED by W L Spielman PRES  
9-27-04

SIGNED \_\_\_\_\_

WARREN L. SPIELMAN, C.E.O. (UNIVERSAL)  
7301 7401 OVERBROOK DRIVE 63121  
PASADENA HILLS, MISSOURI 63133

DONALD WILLIAM CRANK, ESQ.  
7777 BONHOMME AVENUE  
SUITE # 1206  
CLAYTON, MISSOURI 63105

SIGNED

Gary Pevnick, CEO

GARY PEVNICK, CEO  
UTS, LLC  
2865 NETHERTON ROAD  
ST. LOUIS, MISSOURI 63136

Kevin M. Kercher  
DIRECT: (314) 345-6248



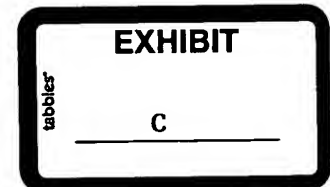
720 Olive Street, Suite 2400 St. Louis, MO 63101  
Tel (314) 345-6000 Fax (314) 345-6060  
WEBSITE: www.blackwellsanders.com

DIRECT FAX: (314) 345-6349  
E-MAIL: kkercher@blackwellsanders.com

May 16, 2005

**VIA FEDERAL EXPRESS**

Warren L. Spielman  
7301 Overbrook Drive  
St. Louis, MO 63121



Re: U.S. National Phase Patent Application  
Serial No: 10/526,942 Filed: March 8, 2005  
Based upon: PCT/US04/040409 Filed December 2, 2004  
For: URINARY TRANSFER SYSTEM AND ASSOCIATED METHOD OF  
USE  
Inventors: Larry Baker and Warren L. Spielman  
Our Ref. No.: 718452.9

Dear Warren:

Enclosed is a photocopy of the U.S. patent application entitled "URINARY TRANSFER SYSTEM AND ASSOCIATED METHOD OF USE" with associated drawings that was filed on March 8, 2005 as well as two original copies of the associated Declaration and Assignment.

As you are aware, Universal Marine Corporation ("Universal") contracted with Urinary Transfer Systems ("UTS"), to assist in the area of designing and pre-production of the prototypes arising from the UTS invention ("NON-INTRUSIVE CATHETER") under a March 6, 2004 Intellectual Property/Consulting and Development Agreement ("Agreements") as well as the Contract Extension signed on September 27, 2004. Copies of the Agreements are enclosed for your convenience. These Agreements resulted in work by you on the NON-INTRUSIVE CATHETER project. The Intellectual Property/Consulting and Development Agreement dated March 6, 2004 specifically recites in Page 2, Section 11 that: "Any and all inventions and ideas relating to Consultant /General Contractor's activities for the Company pursuant to this Agreement, whether patentable or not, conceived or reduced to practice by Consultant/General Contractor during the performance of this Agreement will be immediately reported to UTS and shall be the exclusive property of UTS and agrees to assign the same to UTS. Consultant/General Contractor will perform at UTS's request any expense and act which he/she can reasonably perform which is necessary to vest title to such inventions and ideas in UTS and to execute unable or unwilling to execute such documents, Consultant/General Contractor hereby appoints

STLD01-1165644-2

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SPRINGFIELD, MISSOURI • EDWARDSVILLE, ILLINOIS • WASHINGTON, D.C. • LONDON, UNITED KINGDOM

AFFILIATES: LEEDS • MANCHESTER • MEXICO CITY • MONTREAL • TORONTO • VANCOUVER

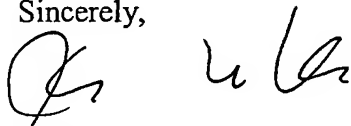
Warren L. Spielman  
May 16, 2005  
Page 2

any officer of UTS as Consultant/General Contractor's irrevocable attorney-in-fact, coupled with an interest, for the purpose of executing such documents."

The Contract Extension signed on September 27, 2004 does not abridge or negate any of these rights but states on Page 2, Paragraph 2, that: "WHERE AS CONTACTOR ALSO AGREES TO EXTEND HIS CONTRACT, WITH ALL INTELLECTUAL PROPERTY AND BUSINESS NON-COMPETE AGREEMENTS STILL IN PLACE, ...".

We would respectfully request that you fulfill your legal obligations and sign and date the enclosed Declaration and Assignment (with notarization). If you refuse to sign the Declaration and Assignment, please indicate your unwillingness by signing below. Please return either the executed Declaration and Assignment or the executed original copy of this letter via fax and mail for our files. If we do not receive the signed Declaration and Assignment within one week of the date of this Letter, it will be assumed that your previous refusals indicate your expression of intent in this matter and that the refusal is made final. Although legally, UTS has the right to execute these documents on your behalf, your assistance is deeply appreciated.

Sincerely,



Kevin M. Kercher

I, Warren L. Spielman, refuse to sign the enclosed Declaration and Assignment as indicated by my signature below. In the alternative, I, Mr. Spielman's legal representative, refuse to allow Mr. Spielman to sign the enclosed Declaration and Assignment, respectively:

By: \_\_\_\_\_,

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Enclosures



WARREN L. SPIELMAN  
7301 OVERBROOK DRIVE  
ST. LOUIS, MISSOURI 63121

718452.9

May 19, 2005

RECEIVED  
SEP 22 2005  
OFFICE OF PETITIONS

Blackwell Sanders Peper Martin, LLC  
Mr. Kevin Kercher  
720 Olive St.  
Suite 2400  
St. Louis, MO 63101

FAX: 314-345-6349

Subject: Assignment of Patent No. 10/526,942

Dear Kevin:

I received your correspondence on the above subject Wednesday May 18, 2005 evening. In order to meet your requirement "within one week of the date on this Letter" I would have had about one and a half days to comply (including obtaining notarization). I think you will agree that this is grossly inadequate and unreasonable. My response is not merely a "yes" or "no" and will therefore take some time to prepare, but I will expedite all possible.

I do not intend to relinquish any rights by extending the response time to a reasonable period.

Thank you for your understanding.

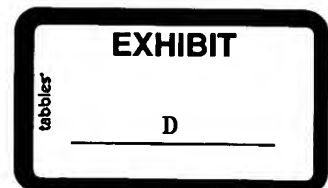
*Warren Spielman*

Warren L. Spielman

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MAY 20 2005

KX





UNIVERSAL MARINE CORPORATION.

WARREN L. SPIELMAN  
7301 OVERBROOK DRIVE  
ST. LOUIS, MISSOURI 63121  
314-261-0993 (PHONE OR FAX)

June 3, 2005

Blackwell, Sanders. Peper, Martin, LLP  
720 Olive St. Suite 2400  
St. Louis, MO 63101 FAX 314 345 6349

RECEIVED

JUN 07 2005

Att: Mr. Kevin Kercher

Subject: Urinary Transfer Systems, LLC

Dear Kevin:

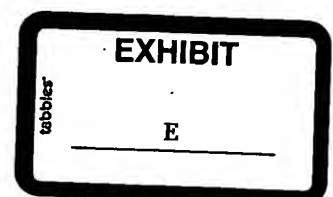
I am not refusing to sign a Patent Assignment Agreement per se, but I am unwilling to sign such an agreement that does not specifically provide compensation for the contribution to the invention that I have provided. I have constantly indicated that I would extend my best efforts to provide a viable, patentable and salable product which doubtlessly would expand the invention and that I would assign such inventive contributions to Urinary Transfer Systems LLC but that I would require additional compensation therefor.

I realize that the Agreement you quoted in your correspondence of May 16, 2005 obligates me to assign inventions and ideas to U.T.S. but it is not stated that such assignment is to be provided at no additional compensation. The Assignment Agreement provided with the above correspondence, however, indicates that "other valuable consideration to Assignor paid by Assignee receipt of which is hereby acknowledged"

There have been no considerations paid to Assignor by Assignee. I have been requesting \$8,000.00 (already reduced from \$9,000.00) for over eight months, which is, in reality, a pittance in comparison to the benefit to the patentability and salability of the product, but no "valuable considerations" have been paid, so I can not sign that "receipt of which is hereby acknowledged".

It should also be noted that I signed the Agreement of March 6, 2004 with the proviso by FAX to Donald Crank, COO, UTS on like date that: "No statement is made in Item 11 that such effort and assignment is to be provided without compensation for such. I am signing the subject agreement on the basis that Universal will be duly compensated for any and all enhancements proposed".

Then on June 1, 2004 I described the three enhancements in detail and concluded the page with the statement "Universal Marine Corporation will release the above for use in the product upon compensation arrangement".



Further indication of the requirement of compensation for the enhancements was provided not only innumerable times in correspondence (which is available on request), but on the Engineering Drawing Tabulation which states (referring to the specific drawings depicting the enhancements): "These Items are restricted and subject to the additional compensation agreement. They will be released for inclusion in patent application and fabrication on satisfaction thereof". Each drawing so identified has the reference note: "See note at conclusion of Engineering Drawing & Parts List"

The drawings were prepared in the period of June 25 to July 10,, 2004 and furnished to U.T.S. with the Engineering Drawing & Parts List (bearing the above indicated restriction note) on July 18, 2004.

Then on September 15, 2004 Universal Marine Corporation sent correspondence to Blackwell Sanders Peper Martin LLC Attention: Mr. Kevin Kercher indicating all of the above restrictions and the requirement of compensation for the enhancements.

As therefore can be readily seen, the requirement for additional compensation for the enhancements is not new but has been on-going from the early outset and has not as yet been met. It is also noteworthy that there has been no formal objection by U.T.S. to the payment of compensation for the enhancements, in fact on at least one occasion it was suggested that probably an advance of \$8,00.00 could be provided in lieu of the Items 2 through 4 of "The Regressive Rate/Progressive Quantity" Schedule on page 4 of the September 8, 2004 Agreement,

I realize the Agreement of September 8, 2004 abates the invoice for \$8,000.00 for the three enhancements if the terms of the agreement are met. The \$8,000.00 is replaced by the Royalty Schedule on page 4 of said agreement. Item 1) requires Spielman to test the first 100 units and the percentage is overly consumed by not only the actual testing but the work necessary to get up to that point and therefore can not include any royalty. Items 2) through 4) do not require any participation by Spielman and therefore are strictly royalty. It should be noted that it is also indicated "Percentages and payments are effective regardless of manufacturer" and the percentage specified in Item 1) shall also thus be made even if conditions of manufacturing change..

It has been intimated by UTS that the royalty provided in Items 2) through 4) may not be forthcoming, as they may desire to misinterpret the true intent of these items to replace the \$8,000.00 fixed amount of royalty which would be negated by this agreement. This is of great concern since that could violate all of the precepts indicated elsewhere in this correspondence. Since there is also the strong possibility of moving the manufacture of the product to foreign sources it would be impossible to monitor and determine the "gross dollars billed by manufacturer" and therefore the dollars due to Universal Marine Corporation by the percentage of same. With these two very serious concerns I feel that the only acceptable way the resolve the compensation problem is for UTS to pay the \$8,000.00 up-front as compensation for the three pri-



or enhancements (not for any future I may provide) and I will sign the Patent Assignment Agreement as it stands, since the statement "receipt of which is hereby acknowledged" would be satisfied.

I had hoped the valid objections had been adequately transmitted to you (most of such correspondence was directed to UTS) and that this issue would have had suitable wording to correct the erroneous statements so I could sign with the confidence that it had proper connotation. I even prepared several "Clarifying Agreements" which would have satisfactorily addressed the problems without changing the Patent Assignment Agreement but these were ignored and not put into effect.

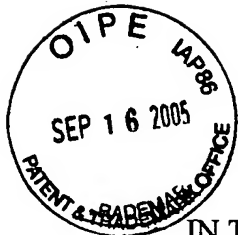
Having said all of the above, the "bottom line" is that there was never any doubt that compensation for the inventive enhancements was and is required and no where in any of the Agreements is it stated that there would be no compensation. The proposed Patent Assignment Agreement however conflicts with this premise by stating "valuable considerations to Assignor paid by said Assignee, receipt of which is hereby acknowledged". I wish to reiterate that this problem is not now newly being brought to light since I have been objecting to this in numerous FAXes and correspondence during a period of over five months.

I admit that in the pressure to get the Agreement of February 27, 2004 signed that I did not realize the full effect of the latter part of Paragraph 11, that statement: "and to execute unable or unwilling to execute such documents, Consultant/General contractor hereby appoints any officer of UTS as Consultant/General Contractor's irrevocable attorney-in-fact, coupled with an interest, for the purpose of executing such documents" Firstly this phrase does not state that "agrees to assign" without compensation. Secondly I am shocked that such a phrase as "appoints any officer of UTS as Consultant/General Contractor's irrevocable attorney-in-fact---- for the purpose of executing such documents" was included. It obviously permits UTS to do anything or fail to do anything and takes away any prerogative I would have had to exercise my rights to not sign in opposition to improper conditions being forced upon me. I can not see how this is ethical if not illegal and certainly grossly unfair since it robs me of all my rights. It is hoped that it can be readily seen how such circumstances can strain the relationship in future work and the conscientiousness therein. If "any officer of UTS" acts as "irrevocable attorney-in-fact --- for the purpose of executing such documents" I hereby register my objection and reserve any rights I may have to address this unjust action.

I regret this lengthy discourse (I did not relish the time I had to spend on it either) but since the matter was not resolved over the past many months that I have been trying for resolution, I had to go through all of the items over again.

*Thank you*

*Warren Spielman*



PATENT  
718452.9

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Larry Baker

Serial No.: 10/526,942

Filed: March 8, 2005

For: URINARY TRANSFER SYSTEM  
AND ASSOCIATED METHOD OF USE

Examiner: Not yet assigned

Group Art Unit: Unknown

Attorney Docket No.: 718452.9

Customer No.: 027128

Confirmation No.: 7563

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SEP 22 2005  
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**STATEMENT OF FACTS IN SUPPORT OF PETITION FILED BY**  
**URINARY TRANSFER SYSTEMS, LLC SUPPORTING FILING**  
**ON BEHALF OF NON-SIGNING INVENTOR (37 CFR §1.47)**

This Statement is being made as to the facts that are relied upon to establish the diligent effort made to secure the execution of the Declaration by the non-signing inventor as well as to establish the proprietary interest in the above-identified application by Urinary Transfer Systems, LLC. This Statement is being made by Donald W. Crank, General Counsel and Corporate Secretary of Urinary Transfer Systems, LLC having an address as follows:

Donald W. Crank, Esq.  
7843 Cornell Avenue  
Suite 1206  
St. Louis, MO 63130-3702.

**STATEMENT OF FACTS**

There were several attempts to get Warren L. Spielman to execute the formal documents associated with the above-identified application. The letters and agreements with Mr. Spielman as well as the explanation of facts surrounding his refusal to execute the formal papers associated



with the above-identified application are attached as Exhibits to the Petition filed contemporaneously herewith and such facts are likewise set forth in the accompanying Petition and are recited below.

Warren L. Spielman is the Chairman and CEO of Universal Marine Corporation. Universal Marine Corporation contracted with Urinary Transfer Systems, LLC ("UTS") to assist in the area of designing and pre-production of prototypes arising from an invention under an Intellectual Property/Consulting and Development Agreement which was executed by Mr. Spielman on March 6, 2004, a copy of which is attached to the Petition filed herewith as Exhibit A. In that Agreement, Universal Marine Corporation specifically agreed to provide product development services whereby the original inventor's drawings, illustrations and prototype product descriptions would be reviewed, analyzed and illustrated so that both display and functional working models could be developed and demonstrated to prospective purchasers, investors, and so forth. As set forth in the Intellectual Property/Consulting and Development Agreement (Exhibit A), a provisional patent application, namely, Serial No. 60/481,785, had already been filed by the original inventor on December 12, 2003. Pursuant to the Intellectual Property/Consulting and Development Agreement, Universal Marine Corporation further agreed to perform the following services:

1. Develop Camera Ready sketches, illustrations, and mechanical drawings and blueprints necessary for manufacturing and pre-manufacturing tool and die casting;
2. Review tool and die casting proposal by manufacturer and review fabrication assembly procedures and line quality control requirements;
3. Test and sample 200 prototype models prior to delivery, receipt and

final payment to manufacturer;

4. Outline requirements necessary for UL Underwriting Requirements and work in conjunction with manufacturer in order to proceed with clinical trials sponsored by major Midwestern teaching/research hospitals.

For the services outlined above, UTS paid Universal Marine Corporation fixed fees for services rendered in conjunction with certain stages of the development process as outlined in the Addendum to the March 6, 2004 Agreement, namely, Stages I, II and III, and Mr. Spielman and his subcontractor were paid \$85.00 per hour for all other collateral services rendered in conjunction with this project, namely, approximately another \$2,600.00. In addition, UTS agreed to and did reimburse Universal Marine Corporation for whatever expenses it had occurred with UTS' approval during the performance of these services. Still further, UTS gave Mr. Spielman and Universal Marine Corporation the opportunity to participate in other related projects but to no avail.

An Addendum to the March 6, 2004 Agreement sets forth five (5) specific stages of development, each stage identifying estimated project fees and the initial retainer deposit given to Universal Marine Corporation. During the course of the March 6, 2004 Agreement, Universal Marine Corporation was paid all fees identified for Stages I, II and III set forth in the Addendum to that Agreement.

The Intellectual Property/Consulting and Development Agreement (Exhibit A) dated March 6, 2004 also specifically recites at Page 2, Section 11 that: "Any and all inventions and ideas relating to Consultant /General Contractor's activities for the Company pursuant to this Agreement, whether patentable or not, conceived or reduced to practice by Consultant/General Contractor during the performance of this Agreement will be immediately reported to UTS and

shall be the exclusive property of UTS and that the Consultant/General Contractor "agrees to assign the same to UTS. Consultant/General Contractor will perform at UTS' request any expense and act which he/she can reasonably perform which is necessary to vest title to such inventions and ideas in UTS and to execute unable or unwilling to execute such documents," and the Consultant/General Contractor, pursuant to Section 11 of the Agreement, further appointed any officer of UTS as Consultant/General Contractor's irrevocable attorney-in-fact, coupled with an interest, for the purpose of executing such documents."

On September 27, 2004, UTS entered into a Contract Extension with Universal Marine Corporation, this Contract Extension Agreement is attached as Exhibit B to the Petition which accompanies this Statement of Facts. Due to a disagreement regarding an invoice dated August 18, 2004 in the amount of \$8,000.00, the Contract Extension Agreement specifically addressed this invoice and specifically stated that Universal Marine Corporation had been paid in full for all contractual obligations under the Consulting and Development Agreement and this Agreement specifically stated that the \$8,000.00 invoice was fully abated by the Contract Extension Agreement. In return for the fixed compensation levels described in the Intellectual Property/Consulting and Development Agreement (Exhibit A) for Stages 4 and 5, Universal Marine Corporation agreed to a variable compensation schedule as set forth in the Contract Extension Agreement, this variable compensation schedule becoming effective when all of the commitments set forth in the Contract Extension Agreement were successfully performed by Universal Marine Corporation. To date, all such commitments have not been successfully performed. Nevertheless, even though the variable compensation schedule on page 4, subparagraph (1) requires a payment of 20% of the gross dollars billed by the manufacturer for the first 100 units produced only after such units have been UL stamped, and even though the 25

units produced to date are still undergoing UL testing and no units have yet to receive the UL stamp, Universal Marine Corporation has been paid 20% of the gross dollars billed by the manufacturer for the 25 units produced to date.

The Contract Extension Agreement (Exhibit B) signed on September 27, 2004 does not abridge or negate any of the prior rights but states on Page 2, Paragraph 2, that: "WHERE AS CONTRACTOR ALSO AGREES TO EXTEND HIS CONTRACT, WITH ALL INTELLECTUAL PROPERTY AND BUSINESS NON-COMPETE AGREEMENTS STILL IN PLACE, ...".

Prototype units are currently undergoing UL testing and approval. As a result, the variable compensation schedule technically has yet to become effective since such schedule requires production, testing and UL approval under the direction of Universal Marine Corporation and Mr. Spielman.

As set forth in the Petition which accompanies this Statement of Facts, a complete patent application, with formal documents, was set to Warren L. Spielman at his last known address by a letter dated May 16, 2005. Response letters from Mr. Spielman were received on May 19 and June 3, 2005. Copies of all of these letters are attached to the Petition which accompanies this Statement of Facts as Exhibits C, D and E.

Mr. Spielman has been paid for all of his services rendered to date under the Agreements attached to the Petition as Exhibits A and B except for the \$8,000.00 invoice dated August 18, 2004 which was abated by the Contract Extension Agreement (Exhibit B).

I have first-hand knowledge of the facts recited herein.

I hereby declare that all statements made herein of my own knowledge are true; and I further declare that these statements were made with the knowledge that willful false statements

and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001 and that such willful false statements may jeopardize the validity of the application and any patent which may issue thereon.

URINARY TRANSFER SYSTEMS, LLC

Dated: 9/16/2005

By: Donald W. Crank  
Donald W. Crank  
General Counsel and Corporate Secretary

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